

PART III

THE NAVAL CLEMENCY AND PAROLE SYSTEMS

301. Director, NCPB. The Navy or Marine Corps officer appointed by SECNAV (ASN(M&RA)) to provide direct administrative and supervisory oversight of the NC&PB.

302. Functions of the Director

- a. Exercise primary cognizance over matters relating to the clemency and parole systems within the Department of the Navy.
- b. Administer and supervise the activities of the NC&PB by monitoring the performance of the clemency and parole review systems to ensure compliance with the provisions of this instruction and to avoid delays in the processing and reviewing of individual cases.
- c. Convene the NC&PB; appoint the President; and establish membership as prescribed in this instruction.
- d. Provide administrative and clerical support for the NC&PB.
- e. Inform SECNAV of matters of interest.
- f. Recommend clemency and parole policy and procedures to SECNAV.
- g. Propose changes to this instruction to SECNAV.
- h. Make recommendations on cases forwarded to SECNAV by NC&PB.
- i. Selectively screen clemency and parole cases reviewed by NC&PB for concurrence with NC&PB determinations and forward with recommendations those cases that require final action by SECNAV.
- j. Submit to SECNAV a semiannual report covering the operations of the NC&PB (see reference (g)) and to the Secretary of Defense an annual report *containing* restoration, clemency and parole statistics (See reference (f).)
- k. Ensure that a system of records, as specified in this instruction, is maintained and that records required for the administration of military and civilian personnel assigned to the NC&PB are *complete*.
- l. Protect the contents of records relating to the processing and reviewing of clemency and parole cases in accordance with references (r) and (s).
- m. Ensure that the NC&PB functions are administered in accordance with the appropriate SECNAV instructions dealing with privacy and access to information.

n. Coordinate with the Commandant of the Marine Corps (CMC), the Commander Naval Personnel (BUPERS), the Chief, Bureau of Medicine and Surgery (BUMED) and the Judge Advocate General (JAG) as well as appropriate civilian agencies (e.g., the FBOP, U.S. Parole Commission, and other Federal, State and local authorities) in matters associated with clemency and parole of naval service offenders.

o. Maintain appropriate liaison with clemency and parole review authorities in the naval service, other services and civilian officials associated with the naval clemency and parole systems.

p. Take final action on cases involving the appeal of parole denials, except in those cases *listed in Section 308 requiring SECNAV decision, or in any case where SECNAV made the initial denial decision.*

q. As the official responsible for complying with the provisions of reference (s) during parole and clemency procedures, ensure compliance with victims' rights and service statutes and instructions. (See references (p), (u), and (v).)

r. Take all other actions necessary for the effective and efficient accomplishment of the NC&PB mission.

303. NC&PB. A component of the NCPB created under references (b) through (d) to review, recommend, and decide clemency and parole issues in cases of offenders who fall within its jurisdiction as defined by this instruction. (See paragraphs 304, 305, and 501.)

304. Cases Within the Jurisdiction of NC&PB

a. The NC&PB has jurisdiction over all special and general court-martial cases in which Navy and Marine Corps offenders and other persons subject to the UCMJ who are tried by Navy and Marine Corps courts-martial are eligible for mandatory clemency review, are eligible for and have requested clemency review, or are eligible for and have requested parole. (See paragraphs 401 and 501.)

b. NC&PB also have jurisdiction over supervised releasees from their minimum release date until the expiration of their full term date.

c. NC&PB has jurisdiction in select cases to recommend substitution for good cause of an administrative discharge for an executed punitive discharge or dismissal. Specifically, NC&PB's jurisdiction is limited to considering those cases where the service member is retirement eligible (*i.e.*, 20 years or more of creditable service) and where the service member files a clemency request with the NC&PB within 5 years of the date of the executed punitive discharge or dismissal. SECNAV or designee will exercise final decisional authority.

d. *In cases of a offender serving an approved unsuspended sentence of confinement for life without parole that is adjudged for an offense committed on or after 30 October 2000, SECNAV will exercise this authority personally and only after the service of a period of confinement of not less than 20 years.*

e. U.S. Coast Guard Cases. When requested by the Commandant of the Coast Guard, NC&PB may:

(1) Provide advisory opinions to the U.S. Coast Guard regarding the appropriateness of clemency as it pertains to U.S. Coast Guard offenders serving sentences of confinement as a result of courts-martial. Clemency decisions regarding U.S. Coast Guard offenders are the responsibility of the Commandant of the U.S. Coast Guard.

(2) Make decisions or recommendations for granting or denying parole in initial and subsequent reviews and on appeal, as well as suspend or revoke parole, of U.S. Coast Guard offenders on the same basis and under the same conditions as are applicable to naval offenders.

f. Convening authorities are required to assist the NC&PB in the exercise of its jurisdiction by promptly providing it with a copy of the record of trial, a copy of the court-martial order, and appropriate post-trial progress reports. (See paragraphs 409, 410 and 509, supra; JAGMAN 0153b(2).)

305. Cases Not Within the Jurisdiction of the NC&PB

a. Cases in which no approved unexecuted portion of a sentence (*other than in select cases of an executed punitive discharge or dismissal*) remains to be suspended or remitted.

b. Cases in which the approved sentence does not include either a punitive separation or confinement for twelve months or more.

c. Cases in which approved suspended punitive separations are to be executed as a result of vacation proceedings held under the Manual for Courts-Martial.

d. Cases in which offenders have an approved death sentence, *unless the sentence has been officially commuted by the President to a lesser punishment.*

e. Offenders who are unauthorized absentees/deserters or are in the custody of Federal, State, local or foreign authorities serving sentence of those authorities at the time they are eligible for mandatory clemency review. They become eligible for mandatory clemency review upon their return to naval custody for completion of their approved court-martial sentence.

f. Offenders whose convening authority action or sentence has been set aside by the U.S. Navy-Marine Corps Court of *Criminal Appeals*, the U.S. Court of Appeals for the Armed Forces, or other appropriate courts of law.

306. Mission of the NC&PB. The NC&PB will act for or provide recommendations or advice to SECNAV in the issuance of decisions regarding clemency or parole matters, specifically:

a. Mitigation or substitution, remission or suspension of any part or amount of the unexecuted portion of a selected offender's sentence, other than a sentence approved by the President of the United States.

b. Remission or substitution of a selected offender's *dismissal* or punitive separation and *either (1) restoration to duty or (2) separation with an administrative discharge under either honorable conditions or under other than honorable conditions (OTH).*

c. Suspension of a selected offender's *dismissal* or punitive separation and restoration of that offender to active duty for a specified period of probation, including the retention of a selected offender beyond the expiration of normal service obligation in order to serve voluntarily a specified period of probation.

d. Reenlistment of offenders who have satisfactorily demonstrated potential for continued military service.

e. Parole of offenders confined in naval brigs serving the confinement portion of an approved sentence of a court-martial who were under the authority of SECNAV at the time of the commission of their offenses.

f. *Supervised Release (As If On Parole) of offenders from minimum release date until expiration of their full term date.*

g. Issuance of advisory opinions on any naval service case in which the offender has been transferred to the FBOP and thus under the parole authority of the U.S. Parole Commission. Advisory opinions will be issued upon request of the U.S. Parole Commission and, as determined by the NC&PB, in those naval service cases in which the NC&PB finds aggravating circumstances or unique military factors present that describe or distinguish the naval service offender's case from the "typical" case for which the U.S. Parole Commission guidelines were set. A copy of the advisory opinion will be provided to the offender.

h. Provide information on offender conviction/release from confinement to Federal, State or local authorities as required by law or regulation.

i. Ensure compliance with the notification requirements for victims as contained in reference (p) during all clemency and parole procedures.

307. Composition. The NC&PB is composed of five members, all of them career *civil service* or naval officers selected on the basis of wide military experience, proven performance and education. *A majority of the nominees will normally be senior or equal in rank to the individual requesting clemency and/or parole.*

a. Nomination. Each of the following will nominate at least two officers as designated below, one as a member of the NC&PB and one or more as alternate members:

(1) CMC: Marine Corps Officers.

(2) BUPERS: Navy line officers.

(3) BUMED: Navy psychiatrists or clinical psychologists.

(4) JAG: Officers of the Judge Advocate General's Corps or Marine Corps Judge Advocates assigned to the Office of the Judge Advocate General (including Naval Civil Law Support Activity).

(5) Director, NCPB: Senior military officers or senior career *civil service* officers (GS-14 to GS-15).

b. Grade of Nominees. Nominated military officers will normally be of the grade of 05 or 06, with preference given to the latter. Exceptions to these grade requirements may be authorized by the Director, NCPB.

c. Designation of President. The Director, NCPB, will designate appropriate nominees as members and one of those designated members as President of the NC&PB and one as alternate President. The remaining nominated officers or *civil servants* will be designated members or alternate members of the NC&PB, as appropriate.

d. Oath/Affirmation. Prior to undertaking duties as a member or recorder of NC&PB, all individuals assigned to such duties will execute the following oath or affirmation, which continues in effect throughout their service with the NC&PB.

I, _____, do swear or affirm that I will faithfully and impartially perform all the duties incumbent upon me as a member of the Naval Clemency and Parole Board; that I will fully and objectively inquire into and examine all cases coming before me; that I will, without regard to the status of the individual in any case, render my individual judgment according to the facts, my conscience, and the law and regulations applicable to the Naval Clemency and Parole Board.

The Legal Advisor to the Director, NCPB, or other judge advocate, will administer the oath to the members.

308. Functions of the NC&PB

a. Clemency. *Clemency is not a right, but a discretionary decision of the NC&PB or SECNAV.* The NC&PB will:

(1) Meet with such frequency as to dispose expeditiously of clemency matters referred to it for action.

(2) Conduct clemency review of cases of selected naval service offenders in accordance with the policy and procedures set forth in this instruction.

(3) *Designate as an agent of the NC&PB an appropriate naval brig panel to conduct a hearing in the case of each offender requesting clemency.*

(4) Obtain, in appropriate cases, documentation from the Naval Criminal Investigative Service (NCIS) and the Federal Bureau of Investigation (FBI) relating any prior criminal history, including information concerning outstanding arrest warrants for the offender whose case is eligible for clemency review.

(5) Grant or deny clemency in consonance with law and regulations of higher authority except for those cases in which SECNAV has retained the authority to take final action.

(6) Submit to SECNAV, with recommendations for final action, cases in the following categories:

(a) Cases in which SECNAV or a designee has indicated in writing an official interest.

(b) Cases in which the offender is a naval officer or midshipman.

(c) Cases involving classified information as defined in reference (h).

(d) *Any individual whose clemency may be the subject of controversy or substantial congressional or press interest as determined by SECNAV or a designee, to include the Director, NCPB.*

(e) Cases in which the NC&PB recommends clemency for any offender whose approved unsuspended, sentence to confinement is in excess of 10 years (to include, *inter alia*, sentences of death, life without parole and life).

(f) Cases in which the offender has been convicted of any offense in which the victim is under the age of 16 years old or is the offender's spouse.

(g) Cases referred to SECNAV by the Director, NCPB, under the oversight authority set forth in this instruction.

(h) Cases referred to SECNAV for final action by any member of the NC&PB.

(i) Cases in which NC&PB recommends substitution of an administrative discharge for an executed punitive discharge/dismissal.

(7) Ensure compliance with crime victims' right to information about the conviction, sentencing, imprisonment, and release of offenders, as mandated by reference (p), throughout the clemency process.

b. Parole. Parole is not a right, but a discretionary decision of the NC&PB or SECNAV. The NC&PB will:

(1) Meet with such frequency as to dispose expeditiously of parole matters referred to it for action.

(2) Conduct parole review of cases of selected naval service offenders in accordance with the policy and procedures set forth in this instruction.

(3) Designate as an agent of the NC&PB an appropriate naval brig panel to conduct a *disposition board hearing* in the case of each offender requesting parole.

(4) Review requests and recommendations for parole of naval service and U.S. Coast Guard offenders.

(5) Obtain, in appropriate cases, documentation from NCIS and the FBI concerning any prior criminal history, including information relating to outstanding arrest warrants for the offender who is requesting parole.

(6) Grant or deny parole in consonance with law and regulations of higher authority, except in those cases in which SECNAV has retained authority to take final action.

(7) Submit recommendations for final action in the following cases in which final decisional authority has been retained by SECNAV:

(a) Cases in which SECNAV or a designee has indicated in writing an official interest.

(b) Cases in which the offender is a naval officer or midshipman.

(c) Cases involving classified information as defined in reference (h).

(d) Any individual whose parole may be the subject of controversy or substantial congressional or press interest as determined by SECNAV or a designee, to include the Director, NCPB.

(e) Cases in which the NC&PB recommends parole for any offender whose approved, unsuspended sentence to confinement is in excess of 10 years (to include, inter alia, sentences of death, life without parole and life).

(f) Cases in which the offender has been convicted of any offense in which the victim is under the age of 16 years old or is the offender's spouse.

(g) Cases referred to SECNAV by the Director, NCPB, under the oversight authority set forth in this instruction.

(h) Cases referred to SECNAV by any member of the NC&PB.

(8) When appropriate, delay the effective date of parole or rescind the grant of parole prior to an offender's release on parole.

(9) Review recommendations for suspension of parole, preliminary interviews, parole violation hearings and revocation of parole.

(10) When appropriate, suspend parole and, if necessary, direct the parolee's apprehension and return to custody.

(11) If parole is suspended and the parolee is being held on charges by Federal, State or local authorities, request the issuance of a detainer on the parolee for return to military authority, except that such request may be held in abeyance pending disposition of the charges.

(12) Order preliminary interviews, parole violation hearings, and parole review hearings.

(13) Designate an appropriate individual or body to act as an agent of the NC&PB to conduct a parole violation hearing when necessary.

(14) Revoke or reinstate parole; or, revoke parole but defer executing the revocation; cancel the deferment or rescind the revocation, if appropriate.

(15) Order, if appropriate, restoration of good conduct time or extra good time earned prior to release on parole if parole is revoked.

(16) Set and modify, prior or subsequent to release on parole, conditions of parole, including requirements for community service, individual or community-based counseling or therapy in substance abuse/dependency, sex-offender/violent offender counseling, therapy and treatment or any other requirement considered necessary to assist the parolee to remain at liberty and live in the community without violating the law.

(17) Issue departmental-level parole decisions in a timely manner.

(18) Ensure compliance with crime victims' rights to information about the conviction, sentencing, imprisonment, and release of offenders, as mandated by reference (p), throughout the parole process.

c. Other Functions. The NC&PB may perform other functions as directed by higher authority. As part of those other functions, the NC&PB may:

(1) Make recommendations for the advancement of an offender's clemency or parole eligibility date in exceptional cases.

(2) Make recommendations to the Secretary, other authorities, or to the offender with regard to concerns the NC&PB has after review of the offender's case that do not fall within the jurisdiction of the NC&PB, but may fall within the statutory or regulatory jurisdiction of other authorities, e.g., Secretarial designation for medical care, Naval Discharge Review Board/Board for Correction of Naval Records action.

(3) Evaluate each case eligible for its review under this instruction and determine whether a violation of the law other than the offense(s) for which the offender has already been convicted has occurred. If, in the opinion of the NC&PB, a violation or potential violation is indicated, refer relevant information to appropriate law enforcement authorities in the locality to which the offender will return upon his or her release from confinement or separation from the naval service. Disclosure of this information must be consistent with Federal law and regulation and should be accomplished when the offender is released from confinement or upon separation from the naval service, whichever occurs sooner.

(4) Provide relevant information to the Immigration and Naturalization Service of the Department of Justice concerning non-U.S. citizen service members whom it determines fall within the criteria of 8 U.S.C. sec. 1251, such as a general court-martial conviction for an offense involving moral turpitude, serious violence, or drug distribution.

(5) Issue warnings to law enforcement authorities of the release of offenders convicted of crimes listed as reportable offenses by the FBI (Appendix B). Warnings will include the offense of which the offender was convicted, the sentence as finalized through judicial and clemency review at the date of release, and the full term release date.

(6) Evaluate each case for substance abuse/dependency (reference (j)). An identification of dependency may be based on a medical diagnosis recorded in the record, a medical diagnosis by the psychiatrist or clinical psychologist, or by a determination of the majority of the NC&PB members. Upon making a determination that an offender is alcohol or drug dependent, ensure that the offender is provided the opportunity to receive inpatient treatment through the Department of Veterans Affairs (VA), if available, prior to discharge under reference (j).

(7) When requested, or when otherwise appropriate, provide recommendations for parole to Federal paroling authorities with custody and parole jurisdiction over offenders of the naval service serving sentences of courts-martial in federal confinement facilities.

(8) Keep itself informed of events, developments and trends in corrections and military justice and keep current in military and civilian corrections issues (including victims' rights and services) and parole programs, legislation and activities of professional correctional and parole organizations. The NC&PB and/or its representatives are encouraged to join and attend meetings of military, Federal and national organizations active in the corrections and parole field. The NC&PB and/or its representatives will visit naval brigs on a regular basis to ensure that policies and procedures contained here are complied with and understood. Such visits will normally be coordinated with appropriate authorities.

309. Objectives. The objectives of the NC&PB are:

- a. The preservation of good order and discipline.
- b. Equality in the administration of justice, including elimination of severe sentence disparity by the remission, mitigation, or suspension of the disparate portion of the sentence.
- c. Protection of the best interests of the naval service, the individual offender, the victim and society.

310. Evaluative Criteria. The appropriateness of clemency or parole in an offender's case will normally be evaluated, at a minimum, in light of the NC&PB, objectives and on the basis of the following criteria:

a. Nature and circumstances of the offenses as determined from the record of trial and allied papers, the court-martial order, and relevant investigative reports, if available. In the clemency and parole review of an offender's case that involves classified information, as defined by reference (h), the convening authority shall prepare and forward to NC&PB unclassified portions of the record of trial together with an unclassified summary of the classified portions of the record of trial. These unclassified records may, at the discretion of the President, NC&PB, be substituted for the full classified record of trial.

b. Military and civilian background of the offender, including age, education, training, experience, marital status, et al.

c. Post-trial progress report, to include an evaluation of the offender's post-trial attitude, conduct and performance; the offender's adaptation to confinement; the offender's sincerity and motivation, including the offender's program plan while serving confinement and progress in meeting that plan. The offender's post-trial denial of guilt of any or all offenses of which the offender was convicted and sentenced contrary to pleas of not guilty is not to be considered an adverse factor by the NC&PB. On the other hand, pleas of guilty at trial may be considered a sign of remorse and rehabilitation by the NC&PB. Also relevant is whether the offender has recognized the wrongfulness of his or her confining offense, shown genuine remorse, achieved a sense of purpose, demonstrated a desire for self-improvement, or exhibited self-discipline.

d. Recommendations of the military judge and the staff judge advocate or legal officer; comments of officials in the post-trial progress report; comments of the officer exercising general court-martial jurisdiction, and, if available, the commanding officer at the time of trial.

e. A psychiatric/psychological evaluation of the offender, if required; relevant social factors; and, when appropriate, a substance abuse/dependency evaluation or any other identified specialized treatment need.

f. Any statement by any victim (including a governmental agency) concerning the offense for which the offender was convicted, including the family of a homicide victim, concerning the financial, social, psychological and emotional harm done to or loss suffered by such victim. (See references (p), (u) and (v).)

g. Restitution made to victims by the offender.

h. Comparison of offender's offense(s) and sentence with the offense(s) and sentences of co-accused and/or the sentences of other offenders whose convictions and sentences were under similar circumstances.

- i. Recommendations of disposition boards and commanding officers.
- j. Clemency previously granted by other authorities, including the presumption of earned good conduct time that establishes an offender's minimum release date under the provisions of SECNAVINST 1640.9B, reference (i).
- k. Uniform non-binding guidelines such as those contained in Title 28 Code of Federal Regulations (CFR) adapted to reflect the unique character and requirements of naval service (Appendix C).
- l. The offender's race, color, religion, ethnicity, national origin, and gender are not evaluative factors used in determining clemency or parole matters. Photographs of offenders will neither be maintained nor utilized by NC&PB.
- m. Exceptions. The NC&PB is authorized to make exceptions to the procedures for clemency and parole review set forth in this instruction upon a determination that the exception is not contrary to law or regulation, prejudicial to the naval service or the offender concerned, in order to:
 - (1) Correct an administrative error that practicably is not otherwise correctable.
 - (2) Allow for special circumstances such as, but not limited to: (a) the refusal of an offender to cooperate in the preparation of a post-trial progress report; or (b) the unavailability of a post-trial progress report and the offender's clemency review is overdue as a result of administrative oversight or error; or (c) the offender is unavailable because of unauthorized absence or other reasons at the time the post-trial progress report was prepared.
- n. The absence of any of the information set forth in subparagraphs b through i above does not invalidate the clemency or parole review process.
- o. *There is no constitutional, statutory or regulatory right or entitlement for an individual to be granted clemency or to be released on parole. The foregoing criteria will not be construed as creating any expectation of clemency or parole for any individual.*

311. Hearings

- a. The NC&PB may entertain personal appearances, caseload permitting. The offender may have a personal representative appear on his/her behalf at the NC&PB hearing at no cost to the government. Unless the offender has been released from confinement on parole or upon completion of service of confinement, the offender may not make a personal appearance before the NC&PB. The NC&PB notifies the offender (via the commanding officer of the brig or other

designee) of the date of the hearing, but will, at all times, attempt to accommodate the schedules of personal representatives when necessary. The offender is ultimately responsible for keeping personal representatives informed about the NC&PB hearing date. Although the NC&PB will assist in that regard should the personal representative contact the NC&PB, the NC&PB is not required to provide direct notification of the hearing date to the offender's personal representative. *The offender will be provided (by the commanding officer or other designee) the opportunity to sign/forward a Privacy Act Waiver as part of the personal appearance request.*

b. Victim/Witness Appearances. *The NC&PB may entertain personal appearances, caseload permitting. Victims and/or witnesses may appear before the board in person or, technology permitting, electronically or have a personal representative appear on their behalf at no cost to the government. The confining institution has primary responsibility for victim/witness notification. Upon notification of expressed interest by the victim and/or witness, the confining institution will inform the NC&PB. The NC&PB will then coordinate with both the confining institution and the victim and/or witness regarding the case review date and time.*

c. Victim/Witness Options. *Victim, victim's family members, the victim's representatives or witnesses may submit matters in writing, by audio tape, video tape or a combination of any or all of these methods for consideration by the NC&PB. In order to facilitate appropriate consideration of written material, it is recommended that documents be provided to the NC&PB staff at least 4 weeks prior to the Board meeting.*

d. *NC&PB will conduct hearings that are generally open to the public unless the offender objects, unless the case involves classified material the revelation of which during the hearing may require the hearing to be closed, or for other good cause. At no time, however, are visitors or personal representatives permitted to be present during the deliberations of the NC&PB. Additionally, the presence of individuals during the NC&PB proceedings will be permitted unless the NC&PB, by majority vote, determines that the presence of such persons interferes with the orderly course of the proceedings.*

e. *NC&PB hearings will be conducted in a non-adversarial and impartial manner. The adjudicatory function of panel members is paramount. Members should avoid conduct, which is or could be construed to be investigatory or prosecutorial. The hearings shall be conducted with dignity and decorum and with the objective of fairly addressing all the facts bearing on a case.*

f. *Members shall avoid conflicts of interest by recusing themselves from pending clemency/parole matters in which they were either indirectly or directly involved in a personal/professional capacity. If in doubt as to whether the appearance or reality of an ethical conflict of interest exists in a specific case, the member must seek an advisory opinion from Director, NCPB Legal Counsel.*

312. Decisions and Recommendations

a. The NC&PB will make decisions and recommendations with regard to clemency and parole on the basis of the record of trial, the court-martial order, the post-trial progress reports, matters presented during personal appearances, and other documents presented to the NC&PB for consideration by the offender, the offender's chain of command/administration, and others who communicate with the NC&PB concerning the offender, including victims and preparers of victim(s) impact statement(s), and, in cases involving national security, *unclassified summaries*.

b. The decisions and recommendations of the NC&PB will be based upon the requests and recommendations contained within the information presented to the NC&PB and will include, at a minimum, consideration of the objectives, evaluative criteria and other policy contained within this instruction.

c. The NC&PB will *not develop* conclusions as to guilt or innocence of the offender, and will accept the findings of offender's court-martial as approved or affirmed at the time the offender's case is before it for review.

d. Decisions and recommendations of the NC&PB will be reached through a simple majority of the voting members. Five members will constitute a quorum. In the event of a tie vote, as the result of an abstention, the NC&PB will refer the case to SECNAV with a recommendation from the Director, NCPB. In the event that a member is unable to attend the scheduled hearing, the member will arrange for his/her alternate to attend or the Director, NCPB, will designate an alternate member to sit.

313. Endorsements. Clemency and parole cases forwarded to SECNAV under the provisions of this instruction will be submitted with pertinent portions of the case file and NC&PB's written recommendations and supporting reasons via the Director, NCPB, for endorsement. If the NC&PB is not unanimous in its recommendations, the recommendations and reasons will be set forth for each divergent view. The Director will either concur or not concur, providing reasons for non-concurrence.

314. Action

a. Clemency and parole decisions will be documented in writing and normally distributed by means of the U.S. Postal Service to cognizant commands, activities and offices, including prison wardens, where appropriate. The cognizant command or authority having the most direct contact with the offender will ensure that the offender is promptly provided a copy of the action of NC&PB or SECNAV.

NC&PB will ensure known victims are kept informed, as required by reference (p). *Electronic notification is authorized and will be used to the maximum extent possible.*

b. Documents issuing decisions of the NC&PB granting or denying clemency or parole and decisions of SECNAV granting or denying clemency or parole will bear the signature of the President, NC&PB, or, upon designation, the Executive Secretary, NC&PB. Decisions of the Director, NCPB, granting or denying parole appeals will bear the signature of the Director, NCPB.

c. Clemency and parole decisions will be executed promptly by cognizant Navy and Marine Corps commands. The authority to execute dismissals, dishonorable discharges, bad conduct discharges or other discharges subsequent to completion of NC&PB clemency review, however, will not be exercised until completion of judicial review of an offender's case under Article 71(a), UCMJ.

315. NC&PB Deliberations. NC&PB deliberations are closed with only the members and staff as required in attendance. Although the final vote of the NC&PB in an offender's case may be disclosed, the deliberations and votes of the individual members of the NC&PB are confidential and will not be released unless directed by SECNAV or the Director, NCPB, upon a showing of good cause which includes, but is not limited to, evidence of bias/prejudice or lack of impartiality.

316. Additional Procedures. Any additional procedures the NC&PB requires to carry out its responsibilities, as set forth in this instruction will be prescribed by the NC&PB.

317. Time-Limitations. Any time limitations contained in this instruction are for administrative and procedural efficiency purposes and are not intended to create any substantive legal rights under the UCMJ or any other provision of law.

a. Clemency/Parole Timeline. Appendix D provides a visual depiction of the Clemency/Parole Timeline. Nothing in Appendix D, however, should be construed as mandating actions or decisions not required within the main text of this instruction.

318. Medical Care. Offenders whose sentences include a punitive separation and who are pending completion of appellate review and are either on parole or on appellate leave are still members of the naval service. Accordingly, they are authorized medical care to the same extent as other naval service members. An offender on parole whose administrative or punitive separation has been executed is not eligible for military medical care. Offenders who are retired are entitled to medical care as any other military retiree. If the circumstances are exceptional, offenders who are not otherwise authorized care may request secretarial designee status under the provisions of NAVMEDCOMINST 6320.3B. The NC&PB may also recommend secretarial designee status in exceptional cases.

319. Records

a. A record of votes in each clemency and parole decision and recommendation will be maintained. Dissents will be identified. Members will sign a Results of Proceedings recording their decisions and recommendations.

b. A system of records of clemency and parole case files will be maintained per applicable directives.

(1) The file contains individual applications for clemency and/or parole, reports and recommendations thereon indicating progress in confinement or while awaiting completion of appellate review if not confined, on parole, or supervised release; correspondence between the individual or his/her counsel and the NC&PB or other Navy offices; other correspondence concerning the case; the court-martial order and staff Judge Advocate's review; record of trial; and a summarized record of the proceedings of the Board.

(2) Retention and disposal. Completed/closed hard-copy files will be transferred to the Washington National Records Center, 4205 Suitland Road, Suitland, MD 20409. Files will be routinely destroyed after 25 years.

c. At a minimum, clemency and parole case files will be maintained as follows:

(1) Clemency/parole decisions will be maintained by the NC&PB until case is closed. Hard-copy files will then be shipped to the Washington National Records Center.

(2) Computer files pertaining to clemency/parole cases will be maintained permanently.

(3) Semiannual and annual statistical reports will be maintained for 25 years. Such reports will reflect the number of cases reviewed and the final action. The data will also identify forms of clemency (e.g., restoration, reduction in confinement, remission of fine) and parole.

(4) Historical data concerning mission, functions, organization, policy and procedures of the departmental clemency and parole systems will be maintained for 25 years.

320. Release of Information

a. Records maintained by NC&PB for use in parole and clemency determinations constitute law enforcement records, as defined by reference (r). All requests for information under the Privacy Act (PA) and/or Freedom Of Information Act (FOIA) shall be processed in accordance with references (r) and/or (s), as appropriate, with due

regard for the protection from disclosure provided to law enforcement records by the cited references, and for the exemption claimed for NC&PB files found in the List of Exempt Systems contained within reference (r). Offenders (first-party requesters) being considered for clemency or parole will, upon written request to Director, NCPB, be afforded access to their records consistent with the principles set forth in references (r) and (s). Requests by offenders for access to records pertaining to themselves shall be processed under both references (r) and (s) regardless of how the request is styled. The intent is to maximize release of information to offenders being considered for clemency or parole, subject to the protection from disclosure and exemption mentioned above. See the policy discussion in reference (s) for guidance on the use of exemptions and discretionary release of information. Particular care shall be exercised in the processing of the following requests:

(1) Medical and psychological records which, if made known to the eligible offender, "could have an adverse affect on the mental or physical health of the individual." (See the discussion on "Denying Individual Access" to records in reference (p).)

(2) Documents which reveal sources of information, obtained upon a promise of confidentiality, including, but not limited to, a victim's statement. (See the definition of "confidential source" in reference (r), and the general discussions about law enforcement records in references (r) and (s).)

(3) Any other information, which, if disclosed, could reasonably be expected to endanger the life or physical safety of any individual. (5 U.S.C. sec. 552(b)(7)(F).)

(4) Information/documents provided to the NC&PB by the United States Disciplinary Barracks, *naval brigs or by any State/Federal agency will be released under references (r) and (s).*

b. Documents affected by exemptions from disclosure contained within references (r) and (s) will be withheld or redacted only to the extent required by references (r) and (s). Otherwise, upon written request, they will be released to the extent permissible under the PA and FOIA.

c. As the Responsible Official for Naval Clemency and Parole matters, the NC&PB will provide sufficient advanced notice to the confinement facility of all proposed clemency and parole hearing dates to allow enough time for the facility to notify victims who have requested such notification. Victims shall have the opportunity to submit documentary evidence or correspondence to be reviewed by the board and to a personal appearance if determined appropriate.

d. The NC&PB and its staff may discuss clemency or parole cases with the following individuals, consistent with the privacy rights of the individual concerned:

- (1) The individual concerned.
- (2) The individual's family, next of kin, or authorized representative.
- (3) The victim, victim's family, next of kin, or authorized representative.
- (4) Any person having a need to know in the performance of his or her duties or having information required by the NC&PB.

321. Correspondence and Questions. Correspondence and questions pertaining to the Department of the Navy clemency and parole systems as contained within this instruction will be answered either by the staff of the NC&PB or the Director, Naval Council of Personnel Boards, as appropriate. Written requests should be directed to the attention of:

President, Naval Clemency and Parole Board
720 Kennon Street, SE, Room 309
Washington Navy Yard
Washington, DC 20374-5023

Telephonic requests may be made to the Administrative Section at DSN 325-6455 or Commercial (202) 685-6455. FAX requests may be made to DSN 325-6629 or Commercial (202) 685-6629.

Internet inquiries soliciting general information about NC&PB should be directed to the following Website:

http://www.hq.navy.mil/ncpb/NC&PB_main_page.htm